

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Respondent.

ORDER SUMMARILY DISMISSING PETITION FOR WRIT OF HABEAS CORPUS AND DENYING CERTIFICATE OF APPEALABILITY

¹ The Court refers to the pages of the Petition as numbered by the CM/ECF system.

1 police. As Garrett fled the scene, he held a knife and ran toward police officers. One
2 of the officers felt threatened and subdued Garrett by firing three shots at him.
3 Garrett was found guilty of burglary with use of a deadly or dangerous weapon and
4 receiving stolen property, and allegations concerning prior convictions and prior
5 prison terms were found true. He was acquitted of two charges of assault with a
6 deadly weapon on a peace officer and lesser included offenses.

7 (Petition at 46.)

8 Pursuant to Proposition 57, the California Department of Corrections and
9 Rehabilitation “implemented a parole consideration program for persons convicted of
10 nonviolent felonies who had served the full terms for their primary offenses.” (Petition at
11 46.) A Board hearing officer reviewed Petitioner’s case, including “the circumstances of
12 Garrett’s current convictions, his prior criminal record, his behavior in prison, and input from
13 Garrett and the district attorney.” (*Id.*) On August 9, 2017, the hearing officer issued a
14 decision denying parole.

15 Petitioner now asserts that the decision to deny him parole was unconstitutional
16 because the hearing officer should not have considered his attempted use of a knife against
17 the police officers who responded to the break-in because he had been acquitted of the
18 associated assault charges, and the denial of parole constitutes unlawful punishment for
19 those charges. (Petition at 5-6, 8-10; see also *id.* at 47.) Petitioner also asserts that the
20 hearing officer wrongly concluded that Petitioner has a history of assaultive behavior and
21 weapons use. (Petition at 7.)

22 DISCUSSION

23 This Court has a duty to screen habeas corpus petitions. See Rules Governing §
24 2254 Cases in the United States District Courts, Rule 4 Advisory Committee Notes. Rule 4
25 requires a district court to examine a habeas corpus petition, and if it plainly appears from
26 the face of the petition and any annexed exhibits that the petitioner is not entitled to relief,
27 the judge shall make an order for summary dismissal of the petition. *Id.*; see also Local
28 Rule 72-3.2.

1 Summary dismissal is appropriate in this case because the Supreme Court's decision
2 in Swarthout v. Cooke, 562 U.S. 216 (2011), precludes habeas relief on Petitioner's claims.
3 In Swarthout, the Supreme Court recognized that Board decisions are reviewed by
4 California state courts under a standard of “whether ‘some evidence’ supports the
5 conclusion that the inmate is unsuitable for parole because he or she currently is
6 dangerous.” Id. at 217 (quoting In re Lawrence, 44 Cal.4th 1181, 1191 (2008)) (additional
7 citation omitted). The Court also acknowledged as reasonable the Ninth Circuit holding that
8 California law governing parole creates a cognizable liberty interest for purposes of
9 analyzing a federal due process claim. Id. at 219-20 (citing Cooke v. Solis, 606 F.3d 1206,
10 1213 (9th Cir. 2010)). However, the Court emphasized that any such interest is “a *state*
11 interest created by California law”; there is no corresponding substantive right under the
12 United States Constitution to conditional release before expiration of a valid sentence. Id. at
13 220 (The Court also stated: “No opinion of ours supports converting California’s ‘some
14 evidence’ rule into a substantive federal requirement.”).

15 Therefore, regardless of the standard of judicial review applied by California state
16 courts, the proper scope of federal habeas review in the context of a parole decision
17 concerns only the constitutional question of whether fair and adequate procedures were
18 employed for protection of the prisoner's state-created liberty interest. Id. (“When . . . a
19 State creates a liberty interest, the Due Process Clause requires fair procedures for its
20 vindication – and federal courts will review the application of those constitutionally required
21 procedures.”); see also id. at 222 (“Because the only federal right at issue is procedural, the
22 relevant inquiry is what process [the petitioner] received, not whether the state court
23 decided the case correctly.”).

24 The Court reaffirmed that “[i]n the context of parole, we have held that the
25 procedures required [by the Constitution] are minimal.” Id. at 220; see also Greenholtz v.
26 Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 16 (1979) (adequate
27 process consisted of an opportunity to be heard and a statement of reasons for parole
28 denial). The Supreme Court determined in Greenholtz “that a prisoner subject to a parole

1 statute similar to California's received adequate process when he was allowed an
2 opportunity to be heard and was provided a statement of the reasons why parole was
3 denied." Swarthout, 562 U.S. at 220 (citing Greenholtz, 442 U.S. at 16). "The Constitution
4 does not require more." Greenholtz, 442 U.S. at 16. Any further inquiry into the actual
5 merits of a parole decision, and specifically into the question of whether the "some
6 evidence" standard regarding present dangerousness was satisfied, would involve a
7 question of state law that is not cognizable on federal habeas review. Swarthout, 562 U.S.
8 at 221 ("[I]t is no federal concern here whether California's 'some evidence' rule of judicial
9 review . . . was correctly applied"); see also Estelle v. McGuire, 502 U.S. 62, 67-68 (1991);
10 Engle v. Isaac, 456 U.S. 107, 121 n. 21 (1982).

11 Following Swarthout, Petitioner may not obtain habeas relief on the grounds asserted
12 in his Petition, which essentially challenge the specific evidence used to support the
13 decision to deny him parole. The Petition and accompanying exhibits indicate that the
14 hearing officer considered Petitioner's input, and he received a written statement of reasons
15 for the Board's decision. Because Petitioner has not shown that the procedures followed by
16 prison officials were constitutionally deficient, there is no basis for federal habeas relief.
17 See Swarthout, 562 U.S. at 220-21; see also Greenholtz, 442 U.S. at 16. The Petition,
18 therefore, should be summarily dismissed with prejudice.

19 **CERTIFICATE OF APPEALABILITY**

20 Pursuant to Rule 11 of the Rules Governing Section 2254 cases, the Court "must
21 issue or deny a certificate of appealability when it enters a final order adverse to the
22 applicant."

23 The Court has found that the Petition should be dismissed with prejudice. For the
24 reasons stated above, the Court concludes that Petitioner has not made a substantial
25 showing of the denial of a constitutional right, as is required to support the issuance of a
26 certificate of appealability. See 28 U.S.C. § 2253(c)(2).

27 ///

28 ///

ORDER

IT IS HEREBY ORDERED that: (1) the Petition is dismissed with prejudice; and
(2) a certificate of appealability is denied.

IT IS SO ORDERED.

DATED: August 9, 2018



PERCY ANDERSON
UNITED STATES DISTRICT JUDGE